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In re Application of	:	DECISION ON
SUMIDA	:	
Application No.: 09/600,047	:	
PCT No.: PCT/JP99/06332	:	PETITION UNDER
Int. Filing Date: 12 November 1999	:	
Priority Date: 12 November 1998	:	37 CFR 1.181
Attorney Docket No.: 450119-2169	:	
For: DATA MULTIPLEXING APPARATUS AND	:	
DATA MULTIPLEXING METHOD AND DATA	:	
TRANSMITTING APPARATUS	:	

This is a decision on applicant's "Petition Under 37 C.F.R. § 1.181 to Remove Notice of Abandonment and Request Remailing of Notification of Missing Requirements" filed on 30 March 2001 in the United States Patent and Trademark Office (USPTO) and supplemented on 11 April 2001.

BACKGROUND

On 12 November 1999, applicant filed international application PCT/JP99/06332, which claimed priority of an earlier application filed 12 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 May 2000. A Demand for international preliminary examination, in which the United States was elected, was not filed prior to the expiration of nineteen months from the priority date. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 12 July 2000.

On 11 July 2000, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application; an Information Disclosure Statement and a first preliminary amendment. An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not included.

On 09 August 2000, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was also notified of the need to pay the \$130.00 surcharge for providing the oath or

declaration later than 30 months from the earliest claimed priority date. Applicant was given one month to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 08 March 2001, applicant was mailed a Notification of Abandonment (Form PCT/DO/EO/909) for having failed to respond to the Notification of Missing Requirements (Form PCT/DO/EO/905) within the time required.

On 30 March 2001, applicant filed the present petition requesting withdrawal of the holding of abandonment. On 11 April 2001 applicant supplemented the petition applicant by filing a "Response to Notification of Missing Requirements" which included an executed declaration of the inventor and authorization to charge the \$130.00 surcharge for providing an oath or declaration later than twenty months from the priority date.

DISCUSSION

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered. (See also, Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

Applicant's petition and accompanying papers filed 30 March 2001 satisfy the items above. In addition, applicant has now provided an executed declaration and payment of the relevant surcharge which were the subject of the Notification of Missing Requirements. With the filing of the executed declaration, all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

CONCLUSION

Applicant's Petition Under 37 CFR 1.181 is GRANTED.

As authorized, \$130.00 will be deducted from Deposit Account 50-0320 for payment of the appropriate surcharge for providing the declaration later than twenty months from the priority date.

The Notification of Abandonment mailed 08 March 2001 is hereby VACATED.

The application has an international filing date of **12 November 1999** under 35 U.S.C. 363 and a date of **11 April 2001** under 35 U.S.C. 371(c).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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